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LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

PROFESSIONAL CORPORATION
312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-3847
E-MAIL: DCOOPER@BRYDONLAW.COM

DEAN L. COOPER
MARK G. ANDERSON
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
DIANA C. FARR
JANET E. WHEELER

OF COUNSEL
RICHARD T. CIOTTON

December 27, 2002

VIA FEDERAL EXPRESS AND
U.S. MAIL

U.S. DOT Dockets
U.S. Department of Transportation
Room PL-401
400 Seventh Street, SW
Washington, D.C. 20590

Re: FMCSA-2002-13871 - 2
Philip Kwan Trucking, Inc.

DEPT. OF TRANSPORTATION
02 DEC 30 AM 9:30

Dear Sir or Madam:

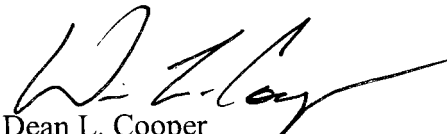
Enclosed for filing on behalf of Philip Kwan Trucking, Inc. is a Motion for Extension of Time. Please stamp the extra copy of this document "filed" and return it to me in the enclosed self-addressed, stamped envelope.

Thank you for your assistance with this matter.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:


Dean L. Cooper

DLC/tli
Enclosures
cc: Pamela Kwan

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

IN THE MATTER OF:)	
)	
PHILIP KWAN TRUCKING, INC.)	FMCSA-2002-13871
)	MO-00-252-US0308
Respondent.)	(Midwestern Service Center)

02 DEC 30 AM 9:30

DEPT OF TRANSPORTATION
FEDERAL
HULL

MOTION FOR EXTENSION OF TIME

COMES NOW Respondent, Philip Kwan Trucking, Inc. ("Respondent"), and, as its Motion for Extension of Time, states as follows to the Assistant Administrator:

1. This action was originally initiated by a Notice of Claim dated October 3, 2000. Clark responded to this Notice of Claim in a timely manner by letter dated October 16, 2000.
2. No further pleadings were filed in this docket until approximately twenty-six (26) months later when the Motion in Opposition to Respondent's Request for a Formal Hearing And A Motion for Final Order was mailed by the Field Administrator on December 19, 2002. The Field Administrator also provided a Memorandum in Support of Field Administrator's Motion for Final Order. These documents were received by the undersigned counsel on December 26, 2002.
3. 49 CFR § 386.35(c) provides, in part, that a party will have 7 days to respond to motions (plus 5 days as the result of mailing. 49 CFR § 386.32(c)(3)). Thus, without an extension Respondent's response to the motions would be due on December 31, 2002, providing only two business days to prepare a response.
4. As the Field Administrator states in the Memorandum in Support, "a

Motion for Final Order is analogous to a motion for summary judgment.” In order to properly respond to the Motion for Final Order, Respondent will be required to provide “affidavits or other evidence relied upon.” 49 CFR § 386.35(c). This will entail, at a minimum, the preparation of affidavits. Respondent likely will also need to participate in the discovery process in order to properly respond to these motions. The Rules of Practice provide for the use of both written interrogatories and requests for the production of documents in discovery. 49 CFR § 386.42 and 49 CFR § 386.43. Both these methods of discovery allow the recipient 30 days for a response.

5. 49 CFR § 386.33 provides that an extension of time may be granted for “good cause.” Respondent suggests that good cause exists because the time to respond otherwise provided by the Rules of Practice is not adequate because of the nature of the Field Administrator’s motion and the volume of materials provided by the Field Administrator in support of its motion, as well as the delay in the mails caused by the holiday season.

6. Because approximately twenty-six (26) months passed between Respondent’s response to the Notice of Claim and the date of the Motion in Opposition to Respondent’s Request for a Formal Hearing And a Motion for Final Order, there does not appear to be any urgency to this matter and, accordingly, it does appear that there would be any prejudice to the Field Administrator associated with an extension of time.

7. Therefore, Respondent hereby requests that its time to respond to the Field Administrator’s pending motions be extended for a period of forty-five (45) days, or until February 14, 2003. Such an extension would allow Respondent to conduct any

necessary discovery and respond in a meaningful manner to the motions.

WHEREFORE, Respondent respectfully requests that the Assistant Administrator extend the time for Respondent to respond to the Field Administrator's Motion in Opposition to Respondent's Request for a Formal Hearing And a Motion for Final Order for a period of forty-five (45) days, or until February 14, 2003, or until such other time as the Assistant Administrator may find to be reasonable and just.

Respectfully submitted,



Dean L. Cooper MBE#36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
(573) 635-7166
(573) 635-3847 facsimile
dcooper@brydonlaw.com

ATTORNEYS FOR
PHILIP KWAN TRUCKING, INC.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, on this 27th day of December, 2002, to:

Greg Roling
Enforcement Program Manager
Federal Motor Carrier Safety Administration
Midwestern Service Center
19900 Governors Drive
Olympia Fields, IL 60461

One Copy

DaVina L. Farmer
Assistant Enforcement Counsel
Federal Motor Carrier Safety Administration
Midwestern Service Center
19900 Governors Drive, Suite 210
Olympia Fields, IL 60461

One Copy

U.S. DOT Dockets
U.S. Department of Transportation
Room PL-401
400 Seventh Street, SW
Washington, D.C. 20590

Original
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A handwritten signature in black ink, appearing to read "W. L. Gay", is written over a horizontal line.